IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.367 OF 2006

JCL International Limited (Pvt) Ltd. ... Petitioner

vs.

1.Mr.A.C.Sen, General Manager of
Bharat Petroleum Corpn. Ltd. & others. ... Respondents

Mr.Suman Seth i/b. M.R.Khatri, for Petitioner.

Ms.S.John i/b. M.P.Savla & Co., for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 9th October,2006

P.C.:-

1. Admitted positions are that the petitioner was awarded a contract of supply of LPG gas Cylinders by the respondents. The purchase order is dated 1.5.1999. there is note in the purchase order regarding the price of the cylinder. It reads as under:-

> "The provisional price of Cylinder effective 1.4.1999 is Rs.679.67"

Thus, when the order was placed on 1.5.1999 for supply of cylinders it was for one year the price of the cylinder was provisional and it was fixed at Rs.679.67. Thereafter, on 30.7.1999 the order was admittedly issued by the respondents which in terms refers to the purchase order dated 1.5.1999 and it states thus:-

> "Please amend as specified below the particulars of contract set out in the above numbered Purchase order. The price applicable per cylinder as on ¼/1999 is 702.98/-"

Admittedly, the petitioner was also paid at this rate i.e. Rs.702.98 but subsequently the price of the cylinder was fixed at a lower rate and the amounts were recovered by making deduction from the amounts payable to the petitioner and therefore, a reference was made. The case of the petitioner, in short was that in the purchase order dated 1.5.1999 the price was mentioned provisionally as 679.67 . That price was finally fixed by order dated 30.7.1999 at Rs.702.98 and therefore, that price was the ruling price till the conclusion of the contract, and therefore, there is no question of respondents thereafter again revising the price. This contention is to be found in paragraph 7 of the statement of claim of the petitioner. The respondents had filed reply to the statement of claim. So far as paragraph 7 of the statement of claim

where this contention based on order dated 30.7.199 is raised is concerned, it was stated that the respondents denied that Rs.702.98 is a firm price of the cylinder and it was stated "Since the firm price based on the understanding reached as mentioned in the letter dated 28.06.1999 could not be determined, the revised provisional price of Rs.702.98 was mentioned in the variation order dated 30.07.1999." Thus, the case of the respondents was that the price i.e. Rs.702.98 mentioned in the order dt.30.7.1999 was a provisional price.

2. So the question to be decided by the learned Arbitrator was really whether the price at Rs.702.98 fixed by the order dt. 30.7.1999 was provisional price or fixed price. It is a common ground before me that the learned arbitrator in his Award has not considered the order dated 30.7.1999 at all. He has not recorded any finding as to whether the price mentioned in the order dated 30.7.1999 was provisional or final. But from the Award it appears that he has proceeded on the footing that the price fixed by order dated 30.7.1999 was the provisional price. If that is so, in my opinion, then the petitioner is perfectly justified in submitting that the learned Arbitrator was obliged to give reasons as to why he finds the price fixed by order dt.30.7.1999 to be provisional price and not final as claimed by the petitioner. This clearly shows non application of mind by the learned Arbitrator to the sole relevant issue involved in the dispute

between the parties. The Award therefore, is infirm and is liable to be set aside. The petition succeeds and is allowed. The Award is accordingly, set aside. The petition is disposed of.